IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2006

CORAM

THE HONOURABLE MR. JUSTICE P.SATHASIVAM
AND
THE HONOURABLE MR. JUSTICE S.MANIKUMAR

WRIT APPEAL No.561 of 2006

The Secretary
National College,
Dindigul Road,
Tiruchirappalli 620 001. ... Appellant/4th Respondent

Vs.

1. Dr.N.Baskaran
Reader and Head of the Department,
Department of Philosophy,
National College,
Tiruchirapalli - 620 001.

2. Government of Tamilnadu,
rep. by its Secretary to Government,
Education Department,
Secretariat, Chennai 600 009.

3. The Director of College Education,
College Road,
Chennai - 6.

4. The Registrar,
Bharathidasan University,
Palkalaiperur,
Tiruchirapalli 620 024. ... Respondents/Petitioner
Respondents 1 to 3

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Prayer : Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 24.03.2006 passed in W.P.No.34327 of 2005.

For Appellant : Mr.S.M.Loganathan
For Respondents : Mr.R.Thiagarajan, Senior Counsel for
Mr.V.Premkumar (for R1)
Mr. M.Sekar, Special Govt. Pleader
(for R2 and R3)

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Mr.V.Govardhanan for
M/s.Row and Reddy (for R4)

J U D G M E N T

S.MANIKUMAR,J.

This Writ Appeal has been filed challenging the order of the learned single Judge, dated 24.03.2006 in W.P.No.34327 of 2005 directing the Secretary, National College, Dindigul Road, Tiruchirapalli 620 001, the appellant herein, to make necessary application to the education department seeking permission to fill up the temporary vacancy to be caused by relieving the first respondent from the date of passing of the order. The 3rd respondent has been further directed to pass orders on the said application within a period of 10 days, keeping in view of the directions issued in the proceedings dated 11.07.1991. The appellant has also been directed to relieve the first respondent forthwith, so as to enable him to join duty in the fourth respondent University.

2. The brief facts leading to the Writ Appeal are as follows:

The first respondent is a Doctorate in Philosophy, working as a Reader and Head of the Department of Philosophy in the appellant college. When applications were called for by the fourth respondent University for the post of Director, Centre for Distance Education, in order to contribute to the cause of education and with an intention to develop his academic and administrative ability, the first respondent applied for the said post. The application was forwarded by the appellant college to the 4th respondent, University. The Registrar of the University, by proceedings dated 08.07.2005, informed the first respondent that he has been appointed as the Director, Centre for Distance Education in Bharathidasan University, Tiruchirapalli for a period of three years, with effect from the date of joining. The copy of the said appointment letter dated 8.7.2005 was also marked to the Appellant College. Thereafter, the first respondent addressed a letter dated 09.07.2005 to the Director of College Education, Chennai seeking permission to work in the University for a period of three years on lien basis. Quoting the resolution of the College Committee dated 31.12.2004, not to grant any lien to any teaching staff, the appellant by its letter dated 1.08.2005 has informed the respondent that his request cannot be complied with. Aggrieved against the same, the 1st respondent has sought for a Writ of Certiorarified Mandamus to quash the communication dated 1.08.2005 in R.C.No.218/2005-2006 and for a direction to the respondents therein to permit him to join the University as Director, Centre for Distance Education with lien in the appellant college and for further orders.

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3. The first respondent has placed reliance on G.O.Ms.No.1594, Education, dated 07.11.1989, wherein the Government is empowered to grant initial sanction of deputation of teachers working in aided colleges for the first year and thereafter, powers have been delegated to the Director of Collegiate Education to extend the period of deputation for second and third years on the same terms and conditions of the first sanction. While the Government and the Director of Collegiate Education are yet to pass orders, the appellant college has turned down the request. Further, the appellant being an 100% aided college is bound to follow the rules and regulations framed under Tamilnadu Private Colleges (Regulation) Act, 1976, hereinafter referred to as 'Act', and in particular, clause 4 the Code of Conduct contained in Annexure 1 of sub rule (1) framed under rule 12 of Tamilnadu Private Colleges (Regulation) Rules 1976 and Section 18 of the Act. The competent authorities to grant lien are 2nd and 3rd respondents, viz., the Government and the Director of Collegiate Education, respectively and that the appellant college can only relieve the first respondent with some reasonable conditions as per the Code of Conduct. The denial of consideration of lien by the appellant in the absence of any other reason can never be considered as reasonable condition and in as much as temporary vacancies can be filled up by the appellant college, no prejudice would be caused.

4. The 1st respondent has filed an additional affidavit dated 25.01.2006, wherein it is stated that even after passing of the resolution dated 31.12.2004, the appellant has relieved two teachers viz., Thlru.R.Prabhakar from the Department of Philosophy, with effect from 24,1.2005 to 23.12.2007 and Thiru.S.Pavi, Lecturer (Senior Scale), Department of Physics till 30.03,2006, and that their lien has been retained. Since the 1st respondent has filed Writ Petitions against the management on earlier occasions, the appellant with a malafide intention had deliberately refused permission.

5. The appellant college has filed a detailed counter affidavit in the Writ Petition, stating that the college is an aided college and affiliated to Bharathidasan University. The first respondent is the Head of Department of Philosophy. In the said department, though there is a sanctioned strength of 9 teaching staff, one teacher is suffering from cancer and he is on long medical leave. Another teacher has tendered his voluntary retirement on 31.12.2004 and he has been relieved. Yet another teacher has been deputed to do his Doctorate under the Faculty Improvement Programme for a period of two years from 24.01.2005 till 23.01.2007 under the U.G.C. scheme. Whenever UGC grants permission to the teacher to attend the Faculty Improvement Programme, it permits the institution to employ a teacher in his place for the said period and pay salary. But, when the teacher Is granted lien, the Government does not grant permission to employ another teacher in his place, which results in shortage of not only teachers, but also class hours and that the interest of the students is also

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affected. To cite an example, when a teacher in Economics Department, was granted lien on 12.1.2001 for a period of five years, the resultant vacancy could not be filled up, since the Government has not granted permission.

6. It is further stated in the counter affidavit that though the Government has sanctioned 137 teaching staff for the College, only 106 teachers are working and that there are 31 vacancies. In the absence of adequate number of teachers, it is not possible to take the required number of classes for the students and that it has resulted in loss of teaching hours to the students and increased the work load to the teachers. Due to shortage of teachers in the Department of Philosophy, the results are also not satisfactory. The interest of the students and the teachers were the prime consideration of the College Committee, resulting in the resolution dated 31.12.2004. Though the first respondent was aware of the decision of the College Committee, dated 31.12.2004, he has submitted his application to work in the University and the same was forwarded after selection. On the request of the 1st respondent, the matter was again placed before the College Committee and the committee reiterated its original stand and decided to decline lien to the first respondent. The letter dated 9.7.2005 of the 1st respondent was forwarded to the Directorate of Collegiate Education, the 3rd respondent herein, with a remark that as per the decision of the College Committee, lien cannot be granted.

7. The appellant further submitted in the counter affidavit that the Government can only act on the recommendation of the management. The college as an employer has every right to grant or decline lien to any employee and that the Government Order No.1594, Education, dated 7.11.89 has no relevance to the case of the appellant. The resolution of the Committee dated 31.12.2004 is well within the Statute and the Code of Conduct. Direct sanction of lien to any teacher by the Government is not possible without the recommendation of the College and that the discretion vested on the college is unfettered. There is no compulsion on the part of the college to grant lien and that there is no malafide intention in denying lien to the 1st respondent. Earlier when two teachers have been permitted to attend the Faculty Improvement Programme under the UGC scheme, substitutes have been permitted in their place, whereas when a teacher opts for a different job in a University, neither the Government nor the University permits the college to fill up the vacancy, which results in loss of teaching hours affecting the interest of the students.

8. When the Writ Petition was taken up for hearing, the learned Senior Counsel appearing for the 1st respondent has brought to the notice of the learned Single judge, the proceedings of the Registrar, Bharathidasan University, Tiruchirapalli dated 11.07.2005, wherein it has been stated that permission has been granted on an earlier occasion.

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9. Mr. R.Sekar, learned Special Government Pleader, Education, appearing for respondents 2 and 3 has submitted that if there are vacancies due to any reason, the appellant college is permitted to fill up the said vacancies temporarily and as such, the case of the first respondent can also be considered in the event of the college submitting an application to the educational authorities. The learned Special Government Pleader further submitted that in all the institutions, where temporary vacancies arose, the Department has given permission to fill up those vacancies.

10. The apprehension of the appellant college is that, whenever vacancies arise due to deputation or any other reason, the Government or the educational authorities have not permitted the College to fill up the vacancies temporarily and as such, the interest of the students is affected and that the college is not in a position to make up necessary working hours for the students and that the teachers are made to work for extra hours. In view of the specific stand of the Government that temporary vacancies are permitted to be filled up, the learned Single Judge has directed the appellant herein to make an application to the Educational authorities seeking permission to fill up the vacancy, which would be caused on relieving the first respondent to join the University on lien basis, within a period of ten days from the date of passing of the order and that the Department has been further directed to pass orders on the said application within a period of 10 days.

11. Pursuant to the order made in W.P.No.34327 of 2005, dated 24.3.2006, the appellant in his letter dated 01.04.2006 has requested the Director of College Education, the third respondent herein, to permit them to fill up the temporary vacancy to be caused by relieving the first respondent on lien, without prejudice to the right to file an appeal. In response to the said letter, the Director of Collegiate Education in his Proceedings R.C.No.56625/F3/2006, dated 04.04.2006 stated that inasmuch as the 1st respondent is relieved to join the post of Director, Centre for Distance Education, Bharathidasan University, permission is granted to fill up the resultant vacancy on temporary basis, on a consolidated scale of pay. The said letter further reads that sanction has to be obtained from the Government for relieving with lien. Thereafter, the appellant had addressed a letter dated 16.04.2006 to the Director of Collegiate Education that as on that date, necessary permission from the Government has not been received and that, on receipt of such communication, the College Committee would act accordingly.

12. Under these circumstances, the appellant herein has filed the present Writ Appeal, challenging the order of the learned Single Judge, dated 24.03.2006 passed in W.P.No.34327 of 2005. The questions to be decided are, as to whether the educational authorities are empowered to

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issue appropriate orders to an aided college, to relieve a teacher/staff with lien, who opts to work in universities and other institutions; dehors the resolution of the College Committee; whether the discretion of the College Committee is unfettered; whether any resolution passed by the employer not to grant lien violated the provisions of the Statute, Rules, framed under the Act, Code of Conduct or the instructions issued by the Government or educational authorities, from time to time.

13. Mr. S.M. Loganathan, learned counsel for the appellant submitted that the learned Single Judge has failed to consider the difficulties that are faced by the appellant, since the posts to which lien was granted are lying vacant in the Department of Philosophy and that the paramount interest of the students is very much affected.

14. Learned Counsel for the appellant brought to the notice of this Court, certain provisions in the Act, in support of his contention that the College Committee is the authority to carry on the administration of the College and appoint teachers and any decision taken by the College Committee is binding on the teacher. The learned counsel has referred to Section 14 of Tamilnadu Private Colleges (Regulations) Act, 1976 and the same is extracted below:

"Functions of the College Committee and responsibility of educational agency under this Act :
(1) Subject to the provisions of this Act and the rules made thereunder, the College Committee shall have the following functions, namely :
(a) to carry on the general administration of the private college excluding the properties and funds of the private college;
(b) to appoint teachers and other persons of the private college, fix their pay and allowances and define their duties and the conditions of their service ; and
(c) to take disciplinary action against teachers and other persons of the private college.
(2) The educational agency shall be bound by anything done by the College Committee in the discharge of the functions of that committee under this Act.
(3) For the purposes of this Act, any decision or action taken by the College Committee in respect of any matter over which the College Committee has jurisdiction shall be deemed to be the decision or action taken by the educational agency."

15. Learned counsel for the appellant ha s also brought to the notice of this Court that under Section 17 of Tamilnadu Private Colleges Regulations Act, 1976, the Government may make rules in consultation with the University, regulating the number and conditions of service (including promotion, pay, allowances, leave, pension, provident fund,

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insurance and age of retirement and rights as respects disciplinary matters but excluding qualifications) of the teachers and other persons employed in any private college. Section 18 of the Act reads as follows :

"(1) Every teacher and every other person employed in any private college shall be governed by such Code of Conduct as may be prescribed and if any teacher or other person so employed violates any provision of such Code of Conduct, he shall be liable to such disciplinary action as may be prescribed.

(2) The college committee may define the standards of conduct to be observed by teachers and other persons employed in the private college, such standards not being inconsistent with the provisions of this Act and the rules made thereunder."

16. Learned Counsel for the appellant reiterated the stand taken in the Writ Petition and submitted that the decision of the College Committee dated 31.12.2004 taken in the interest of the students will prevail over the personal achievement of the 1st respondent. He further submitted that the College Committee has got the unfettered discretion to grant or decline lien to any staff, who opts to work in Universities or educational institutions and that neither the Government nor the educational authorities have any right to interfere with their statutory right to administer the college and any such direction issued would be contrary to Section 14 of the Act. The resolution dated 31.12.2004 is in accordance with the provisions of the statute and the rules and the Code of the Conduct framed in accordance with Rule 12 read with Section 18 of the Tamilnadu Private colleges (Regulations) Act, 1976.

17. Learned Counsel for the appellant further contended that the learned Single Judge has mainly considered the Substitute for the first respondent, without examining the real controversy and has granted certain directions in the Writ Petition, which are contrary to the rules governing the issue. He further submitted that the post of the Head of the Department cannot be filled up on temporary basis and that two persons cannot hold lien for a single post. Under such circumstances, the directions granted in the Writ Petition are contrary to rules.

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Learned Counsel for the appellant has also submitted that as per the Code of Conduct empowered in Annexure 1 of sub-rule of Rule of the Tamilnadu Private Colleges (Regulations) Act, 1976, it is not obligatory on the part of the appellant college to relieve a teacher on lien.

18. Referring the above statutory provisions, Mr.S.M.Loganathan, learned Counsel for the appellant submitted that the College Committee is empowered to carry on the administration of the college in the

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matter of appointment, conditions of service, disciplinary matters and that the right is unfettered. No restrictions have been placed in the statute and that therefore the resolution could be predominantly considered and given weightage and the decision taken by the College Committee is binding on the teacher.

19. It is further submitted by the learned counsel for the appellant that the 1st respondent has got vast experience in yet another Department and that, it cannot be filled up by a new encumbant, more so, when other teachers are not available to impart education to the students. Even if appointment is made on temporary basis, it may not be helpful to the college or for the students. Placing reliance on a decision reported in 1996 (10) SCC 734 (Dr.S.K. Kacker vs. All India Institute of Medical Sciences and Others), the learned Counsel contended that even in a case, where a person is appointed to a substantive vacancy on tenure basis, he cannot be reverted to the parent department.

20. The Counsel for the appellant also contended that the authority competent to decide the deputation of the Substitute is the one which controls the service of post from which the employee is transferred on deputation and that the College Committee can decide as to whether the 1st respondent shall be relieved or not. In support of his contention, the counsel cited a decision of the Apex Court reported in 1998 SCC (L & S) 34 (State of Punjab and others vs. Inder Singh and others). The main thrust of his argument that the employer cannot be compelled to relieve a teacher with lien is contrary to the statutory provisions and rules, against the Interest of the students.

21. The first respondent has filed a detailed affidavit in support of the Vacate Stay Petition, contending inter alia, that the appellant is an 100% aided college and as per the Code of Conduct, contained in Annexure I, of sub rule (1) of Rule 12 of Tamilnadu Private Colleges (Regulations) Rules 1976, a teacher has to send an application for employment only through the College Committee and that it is open to the College Committee to relieve him prescribing reasonable conditions. He has further submitted that certain other teachers have been permitted to go on lien basis on earlier occasions in the same college and that the refusal to relieve him is malafide. Though, during the course of hearing of the Writ Petition, the appellant college made a statement that they are willing to relieve him with lien, subject to the condition that the educational authorities permit them to fill up the vacancy, the letter of the appellant dated 21.04.2006 addressed to the Director of Collegiate Education to act according to the decision of the College Committee is unjustified. Though, the Government by letter dated 27.04.2006 has directed the Director of Collegiate Education, the third respondent herein, to relieve the teacher to take up his appointment immediately and permitted to fill up the vacancy, the new stand taken by the appellant that the absence of the first

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respondent as Head of the Department cannot be compensated by any other teacher is peculiar.

22. It is further submitted in the affidavit that Head of the Department is not a position, but it is only a position to be occupied by a senior-most teacher, as such, no selection or recruitment is made for the said post. If the first respondent is relieved from the post as Head of Department, the next senior-most teacher, who is very much available can be nominated as Head of Department. The same thing happened during the academic years 1993-95, when the first respondent was relieved with lien to work in Saiva Siddhanda Department of University of Madras and that the next senior-most teacher, Mr.Ramanathan was nominated and that no recruitment or selection was made. It is also the case of the first respondent that in any faculty, the Head of Department will be discharging more of administrative work. The provision of lien is a facility given by the Government to the teachers working in aided colleges for pursuing higher studies or to take up teaching/administrative post in an educational sector with the spirit of enabling the teacher to improve knowledge and skill, which would ultimately benefit the student community and the institution. Though he was selected to the post of Director, Centre for Distance Education on 06.07.2005, he has been waiting for nearly 10 months to take up the job. The experience he would gain as Director, Centre for Distance Education on the teaching and administrative side would certainly be utilized for the welfare of the students on his rejoining the college, after the assignment.

23. An additional affidavit has also been filed by the 1st respondent that the Director of Collegiate Education by order dated 04.04.2006 has permitted the appellant to fill up the post by appointing a Junior Lecturer, temporarily, on a consolidated pay of Rs.6000/- and that subsequently, the Government had given a gobye to the consolidated payment system and that therefore the Substitute will get a sum of Rs.14,000/-. It is also stated in the additional affidavit that the academic posts like administrative cum academic posts in the Universities like the Registrar, Controller of Examinations, Director of Distance Education, etc. are to be filled up by persons with good teaching experience. If the management declines to relieve a teacher to join the administrative cum academic posts in the Universities, then these posts would remain vacant which would also paralyse the educational system of higher education.

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24. Mr.R.Theagarajan, learned Senior Counsel appearing for the 1st respondent submitted that there is no error in the order of the learned Single Judge and that the apprehension of the appellant college has been cleared by the educational authorities by granting necessary permission to fill up the consequential vacancies. Placing reliance on the Government Orders, he submitted that the College Committee is bound by Government Orders and that there is no ground for interference.

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25. Mr.R.Sekar, learned Special Government Pleader, appearing for respondents 2 and 3 has submitted that permission has been granted on 04.04.2006 to the appellant college to appoint any other teacher in the temporary vacancy caused due to the relieving of the first respondent and that the Government in its letter dated 27.04.2006 had also directed the educational authorities to relieve the individual to take up his appointment immediately and to post a Substitute in his place.

26. Learned Special Government Pleader also filed a typed set of papers, which contains certain Government Orders issued in the matters relating to deputation of aided college teachers to Universities and other institutions. In G.O.Ms.No.1594, Education, dated 07.11.1989, the initial sanction for deputation of aided college teachers shall be issued by the Government and that the Director of Collegiate education had been delegated to issue sanction orders for the 2nd and 3rd years of deputation. In G.O. Ms.No.1146, dated 09.08.1990, the Government has laid down the procedures to be followed in the matters relating to appointment of teachers working in aided colleges to be deputed on foreign service. Whenever teachers working in the aided colleges opt to work in Universities, they can be permitted to work on Foreign Service for a maximum period of three years. Lien is granted for the first year by the Government and thereafter, the Director of Collegiate Education can issue appropriate sanction orders for the second and the third years. Both the Government Orders are extracted hereunder for proper appreciation, with reference to the facts of the case.

G.O.Ms.No.1594, Education (G-2) Department, dated 07.11.1989 :

"The Government accordingly direct that the initial sanction of deputation of aided college teachers shall be sanctioned by Government and the extension of deputation of Foreign service for 2nd and 3rd year shall be sanctioned by the Director of Collegiate Education, himself. The Director of Collegiate Education is informed that the extension of deputation for second and third years shall be on the same terms and condition of the first sanction. He is also informed that the extension of deputation beyond three years shall be sanctioned only by the Government, since the extension or deputation beyond three years can be given only, on exceptional and special circumstances in the public interest, the proposal for extension of deputation for the year should be sent to Government well in advance before the expiry of the 3rd year."

G.O.Ms.No.1146, Education, dated 09.08.1990 :

"Government consulted the Director of Collegiate Education regarding the procedure to be followed for permitting the staff working in Private Aided Colleges to work in Universities.

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2. If the Private Aided College staff opt to work in Universities, permission is granted for one year only on lien basis. If they opt on deputation terms and conditions permission is granted for a maximum of three years. Such permission is granted by the Government for the 1st year and by the Director of Collegiate Education for the 2nd and 3rd years. Regularization in respect of Government employees is made as per provisions made under 110 - 116 of the Fundamental Rules. Since the fundamental rules cannot be applied to the staff of Private Aided Colleges, the same cannot be acted upon. The Aided Private College staff are permitted to receive the salary given by the foreign service agency. Regarding the contribution payable on account of leave and pension period, the concerned teacher/respective foreign service agency shall pay to the Government on the basis of the percentage as determined by the Accountant-General, Chennai. The Director of Collegiate Education has informed that at present this procedure is being followed.

3. Government concurs with the same accepting the views of the Director of Collegiate Education and orders that the present procedure now in vogue may be followed. Further, it is informed that only after permission is granted by the Government, teachers opting for University Service shall be relieved from duty."

27. In G.O.(ID) No.214 Higher Education (E2) Department dated 12.08.2005, Dr.V.Radhakrishnan, A.V.C. College, Trichy has been permitted to work as Registrar of Bharathidasan University, Trichy for a period of three years on Foreign Service, subject to certain conditions. One such condition imposed on the said teacher is that after the completion of the period of Foreign Service, he should immediately join the parent college. Similar order has also been issued by the Government in G.O.(ID) 246 Higher Education (E2) Department, dated 26.09.2005, wherein permission has been accorded to Smt.Annie Mary Fernandes to work as Registrar in the University of Madras, on lien basis for a period of one year.

28. It is pertinent to refer to the purpose for which the Tamilnadu Private Colleges (Regulation) Act 1976 has been enacted, the reasons for certain amendments to the Act and also some of the purposes of the Act and the rules framed thereunder. The Government of Tamilnadu decided to regulate the conditions of service of teachers employed in private colleges and to make rules relating to managing bodies and payment of grants to such colleges, statutory. The Tamilnadu Private Colleges (Regulations) Act, 1976 (President's Act 19 of 1976) was enacted to provide regulation of private colleges in the state of Tamilnadu. The Act has undergone many amendments, when it has been brought to the notice of the Government, that the management of private schools and colleges indulged in mal-administration in affairs of the educational institutions which adversely affect the imparting of

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education in these institutions and that the closure of classes and courses in the institutions caused hardship to the teachers.

29. The avowed purpose and object of the Act is to protect the interest of the teachers and students and other persons employed in private colleges against the arbitrary action of the management. Provisions have been made relating to the service conditions of the teachers and wherever the rights of the teachers are infringed, appropriate remedial measures are also provided.

30. Whenever a college is established under Section 3 of Tamilnadu Private Colleges (Regulation) Act, 1976, the college has to seek the permission of the Government and except in accordance with the terms and conditions specified, no person shall establish a college. In section 11 of the Act, while constituting the College Committee, adequate representation is given to the teachers. Sections 15 and 16 deal with the qualifications of teachers and other persons employed in Government Colleges and that the University may make regulations, statutes or ordinances specifying the qualifications for the appointment of teachers in private colleges. The Government is empowered to make rules for appointment to any post, other than teachers, in any private college. As far as the conditions of service of teachers and other persons employed in private colleges are concerned, the Government may make rules in consultation with the University.

31. Section 19 deals with dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private colleges. Under section 19 (a), no teacher or other person employed in any private college shall be dismissed or removed or reduced in rank, nor shall his appointment be automatically terminated except with the prior approval of the competent authority. Similarly under clause (3)(b) of the said Section, no teacher or other person shall remain under suspension for a larger period. These provisions have been made only to safeguard the interest of teaching and non-teaching staff and also to have supervision and control of every activities of the management. In the light of the objects and statutory provisions, it has to be seen as to whether the action of the College committee in declining to relieve the first respondent from the college on lien basis is justified and whether it can be brought within the parameters of the Code of Conduct.

32. Section 10 of the Tamilnadu Private Colleges (Regulation) Act, 1976 deals with payment of grant. As per Section 10(2), the Government may withhold permanently or for any specific period, the whole or part of any grant referred to in sub-section 1, in respect of any private college which does not comply with any of the provisions of the Act or any Rules made or directions issued thereunder, insofar as such provisions, rules or directions are applicable to such private colleges, etc.

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33. Rule 7(1) of Tamilnadu Private Colleges (Regulation) Rule 1976, states that subject to the orders and instructions issued by the Government from time to time, every college may be paid grants, specified in sub - rule (2). No grant shall be paid to any college, affiliation / approval of which has been withdrawn by the University concerned for a period of such affiliation/ approval. Sub-clause (c) of Clause 3 of the said rule states that the educational agency shall carry out instructions issued by the Government or by the Director to maintain academic standards and to safeguard the interest of the teachers and students. Conjoint reading of section 10 of the Act and Rule 7 (a), 3(c) cast a duty on the educational agency to comply with the provisions of the Act, Rules made or the directions issued thereunder to maintain academic standards and to safeguard the interest of the teachers and the students.

34. As per Annexure 1, Sub rule (1) of Rule 12, Code of Conduct has been prescribed for teachers and other persons employed in a college. As per clause 4, sub clause (b), the Committee shall not withhold any such application. It shall however be open to the Committee to prescribe reasonable conditions for relieving the teacher or other person. The first respondent has applied to the post of Director, Centre for Distance Education, Bharathidasan University through the appellant college in accordance with law with clause 4(a) of the Code of Conduct. The Committee has also forwarded the application of the 1st respondent, but when the matter came up for relieving the first respondent, the Committee has chosen to decline his request on the sole ground that they have passed a resolution dated 31.12.2004, not to relieve the teacher with lien.

35. A plain reading of clause 4(b) Code of Conduct shows that the College Committee has to relieve a person, if he opts for employment under any other agency, only by imposing a reasonable condition for relieving him. When the Government has issued orders right from the year 1989 that the person, who opts to work in Universities or any other institutions can be relieved with lien, the refusal on the part of the appellant to relieve the first respondent with lien cannot be considered as a reasonable condition.

36. We shall now examine the contention of the appellant as to whether, Rule 14 of the Fundamental Rules is applicable to the case of the first respondent and that if he is appointed to a permanent post, whether his lien is terminated in the post of Head of Department of Philosophy, in the appellant college. Rule 14(b) deals with the case of the Government service and it states that lien on a post shall stand terminated on his acquiring the lien on a permanent basis (whether only the Government or the Central Government or any other State Government) outside the cadre on which he is borne.

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37. Rule 14 of the Fundamental Rules is very clear that lien is applicable to a employee only in the case of Government service and it is not applicable to an employee in aided college. This is also supported by the Government Order, G.O.Ms.No.1146, Education, dated 09.08.1990, wherein it is specifically stated that Fundamental Rules are not applicable to the staff of private aided colleges. This Government Order has been issued with reference to the salary to be paid to the staff of aided colleges, who work in a University on deputation service.

38. We shall now consider as to whether the decisions cited by the counsel for the appellant is applicable to the facts of this case. The decision quoted in 1996 (10) SCC 734 deals with a situation, where the Head of Department and Professor of ENT Department in All India Institute of Medical Sciences is entitled to apply for and seek selection to the post of Director for a period of five years. The Apex Court held that FR 14-A is applicable in such cases and that the resolution of the College Committee is inconsistent with the statutory rules.

39. In the Instant case, as stated above, Rule 14 of the Fundamental Rules is not applicable to teachers, who opt to work under any other educational agencies or Universities. Reliance is placed on a decision reported in 1998 SCC (L & S) for the proportion that the authority competent to decide whether the Substitute deputed is the one, which controls the service of post from which the employee is transferred on deputation.

40. Considering the concept of deputation, the Honourable Supreme Court has held that deputation is made outside the parent department, that is to say, to another Department on a temporary basis. After the expiry period of deputation, the employee has to come back to his parent department, occupy the same position, unless he is bound for promotion in the same department as per the rules and regulations. There can be no deputation without the consent of the person so deputed and he would therefore, know his rights and privileges under the deputation test.

41. In the present case, the first respondent knows the consequences of his posting as Director for Distance Education, Bharathidasan University and that his deputation or otherwise is only with his consent. Moreover, whenever sanction orders are issued by the Government in respect of the posting of teachers in Universities or any other institutions, a condition is imposed that, as and when the tenure is completed, they should be reverted back to the respective college, which shows that the lien in the parent department is not terminated and that it is retained. Therefore, the contention of the appellant that Fundamental Rules 14 is applicable to the case of teachers working in aided colleges and that the case laws relied on by the appellant in

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support of his contention are not applicable to the facts of this case.

42. Rule 11 of Tamilnadu Private Colleges (Regulations) Rules 1976, deals with the conditions of service of teachers and other persons in colleges. As per Rule 11(3) in the case of regular vacancies, a fully qualified candidate shall be appointed only on regular basis. If any temporary vacancy arises on account of leave, deputation for training or resignation etc., a qualified candidate may be appointed temporarily for a specific period, provided that the service of teacher shall not be terminated before the expiry of the said period. A separate agreement is entered into between the staff and the management.

43. As per section 11 of Tamilnadu Private Colleges (Regulations) Act 1976, the Government may make rules in respect of service conditions of teachers and other persons employed in private colleges. Executive instructions have been issued in the form of Government Orders dealing with a situation relating to deputation of aided college teachers to Universities and other institutions. The source of power can certainly be traceable to Sections 17 and 18 of the Act, read with Rule 14, framed thereunder. Therefore, the Government is empowered to issue directions for regulating the service conditions of teaching and non-teaching staff in respect of aided colleges. Moreover, the appellant is a 100% aided educational institution. An institution which is granted recognition and aid by the Government is bound to comply with the provisions of the Statute and the orders issued by the Government in regulating the conditions of the teachers employed in a College.

44. There cannot be any uncontrolled autonomy with regard to administration in the matters relating to appointment, promotion and any other conditions of service. The educational authorities, which grant recognition/permission can issue appropriate orders, particularly relating to academic and administrative matters, taking into account the welfare of the teachers and the students. The private colleges can discharge the duties only within the provisions of the Statute and the Rules. The statutory power of regulating the service conditions of the teachers and other staff working in private colleges cannot be diluted by the management. The management of the college has no absolute right to ignore the Government Orders relating to relieving of teachers/teaching staff and others, who opt to work in Universities and other institutions.

The decisions of the College Committee, which are carried out by the Secretary of the College are being challenged, if they are contrary to the statutory provisions or rules or administrative orders issued from time to time. Therefore, it is too late in the day to contend that the Government or the educational authorities cannot issue any orders to regulate the service conditions of the teaching or non-teaching staff, as the case may be.

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45. While considering the interest of the students, the Government has come forward with specific orders permitting the appellant to appoint a teacher in the resulted vacancy on a temporary basis, considering the object of the Statute and the provisions. The educational agency or the College Committee as the case may be, shall also consider the interest of the teacher and while doing so, has to comply with the directions issued by the Government or the educational authorities from time to time. In the instant case, both the interest of the students as well as the teachers are safeguarded by issuing appropriate orders in directing the college to appoint a teacher in the resultant vacancy, which is caused consequent to the relieving of the teacher.

46. Therefore, the educational agency of the College Committee is bound to implement the directions of the Government or the educational authorities and it should not be construed as compelling the College Committee to act contrary to its resolution. Any decision of the College Committee should be in accordance with law with the provisions of the Act.

Whenever academic cum administrative posts are filled up in the Universities and other educational institutions, persons with rich experience in academic as well as administrative side are preferred. Therefore, it is incumbent on the part of the aided colleges to consider the importance of education at the University level, which is certainly higher than the college level. Therefore, it is open to the persons working in a private college or Government College with high academic career and administrative experience to aspire for career advancement, to impart better education at University level. The experience which they gain at the University both on the administrative and academic side will certainly benefit the teachers as well as the students in the college, no sooner they are reverted to the parent college.

47. Considering this aspect also, it is the duty of the respective colleges to relieve the teachers working in aided colleges. The first respondent has been directed to be relieved by the order of the Director of College Education, dated 04.04.2006 and that permission has also been granted to appoint a Substitute in that place. The first respondent has been appointed as Director of Distance Education, Bharathidasan University on 08.07.2005 and that the post is kept vacant for a considerable time due to litigation and the correspondence between the parties. Direction is issued to the appellant to relieve the first respondent forthwith, so as to enable him to join in the University. The Government and the educational institutions are further directed to issue necessary sanction orders in this regard.

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48. For the reasons stated above, we find no valid grounds to interfere with the order of the learned Single Judge, on the other hand, we are in agreement with her conclusion.

Accordingly the Writ Appeal is dismissed. No costs. Consequently, connected W.V.M.P.No.1386 of 2006 and W.A.M.P.No. 1154 of 2006 are closed.

abe

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary,
   Government of Tamilnadu,
   Education Department,
   Secretariat,
   Chennai 600 009.

2. The Director of College Education,
   College Road, Chennai - 6.

3. The Registrar,
   Bharathidasan University,
   Palkalaiperur,
   Tiruchirapalli 620 024.

4. The Reader & Head of the Dept., Dept of Philosophy,
   National College, Trichirapalli 650 001.

+ 1 cc to Mr. P. Premkumar, Advocate SR No. 38548
+ 1 cc to M/s. Row & Reddy Advocate SR No. 38286
+ 1 cc to Mr. A. Saravanan, Advocate SR No.38393
+ 1 cc to the Government Pleader SR No. 38432

RA(CO)
SR/29.8.2006

JUDGMENT
IN
W.A.No.561 of 2006

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